



0000109985

RECEIVED

## BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 16 2002

2002 MAY 16 P 4:04

AZ CORP COMMISSION  
DOCUMENT CONTROL

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKETED BY

IN THE MATTER OF US WEST COMMUNI-  
CATIONS, INC.'S COMPLIANCE WITH  
§ 271 OF THE TELECOMMUNICATIONS  
ACT OF 1996

Docket No. T-00000A-97-238

**COX ARIZONA TELCOM, L.L.C.'S  
COMMENTS ON STAFF'S MAY 1, 2002  
REPORT ON QWEST'S COMPLIANCE  
WITH PUBLIC INTEREST AND TRACK A**

Cox Arizona Telcom, L.L.C. ("Cox") submits the following comments on Staff's May 1, 2002 Report on Qwest's Compliance with Public Interest and Track A.<sup>1</sup> In general, Cox supports Staff's concerns about Qwest's Winback Tariff; however, Cox believes Staff's proposal to remedy the anticompetitive effect of the Winback Tariff is both confusing and unnecessarily complicated.

First, it is clear that the current form of the Winback Tariff is unacceptable. *See* Report, ¶¶ 281, 283, 389. Staff offers Qwest the option of either (i) withdrawing the existing Winback Tariff or (ii) "modifying" that tariff by filing a new version of the tariff. *See* Report, ¶¶ 283, 388. However, the proposed modification set forth in the Report is not clear. Is Qwest supposed to: (i) delay its winback efforts for a particular customer until *after* the customer has used the CLEC service for six months or (ii) simply delay offering a

<sup>1</sup> Although the report is titled "Final Report," the Notice of Filing suggests the May 1, 2002 report is a "Proposed Report" that will be revised to incorporate comments on that report.

1 winback incentive under the tariff until six months after Qwest receives its 271 approval?

2       Regardless of what was intended, neither modification will resolve the problems  
3 created by the Winback Tariff as identified in the Report. If the former modification is  
4 correct, Qwest will still have an inappropriate anticompetitive tool because it will still have  
5 an enormous market share. Moreover, many CLECs depend on Qwest even after the initial  
6 port from Qwest to the CLEC because those CLECs use Qwest UNEs. Qwest would still  
7 have the incentive to provide bad wholesale service in order to tarnish CLEC retail service  
8 and win back those retail customers. If the latter modification was intended, Qwest will  
9 still have an enormous market share six months after the 271 approval – and given its new  
10 ability to “package” services – will be pursuing former customers more aggressively than  
11 ever. Qwest also will still have the same incentive to provide poor number porting or other  
12 wholesale service to CLECs in order to tarnish the CLECs’ apparent performance in the  
13 eyes of the customers.

14       Second, Cox submits the most simple and most effective solution is to require  
15 Qwest to withdraw its current Winback Tariff. Period. Qwest would be free to submit a  
16 new Winback Tariff whenever it feels it is appropriate to do so, *but* the Commission would  
17 be able to treat the tariff filing as it would any new tariff filing. It would retain its full  
18 ability to analyze whether the proposed tariff is in the public interest given the existing  
19 circumstances at the time of filing (market share, tariff language, etc.) without any  
20 lingering effect from statements in its 271 orders about how a such a tariff might be  
21 modified to be acceptable.

22       Third, Staff notes (Report, ¶ 308) that Qwest has filed a Local Service Freeze  
23 (“LSF”) tariff. However, the Report does not note that Cox submitted supplemental  
comments (filed on February 5, 2002 and February 25, 2002) related to the potential impact  
of such a tariff on this docket. As noted in those comments, a LSF tariff creates significant  
new concerns about the Public Interest element and Local Number Portability (Checklist  
Item 11). Cox submits that Qwest also should be required to withdraw its LSF tariff filing

**ROSHKA HEYMAN & DEWULF, P.L.C.**  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 as a condition of compliance with the Public Interest element. This condition would be  
2 consistent with Staff's recently-filed testimony in the LSF tariff docket (Docket No. T-  
3 01051B-02-0073).

4  
5 RESPECTFULLY SUBMITTED May 16, 2002.

6 COX ARIZONA TELCOM, L.L.C.

7  
8 By: \_\_\_\_\_



Michael W. Patten  
ROSHKA HEYMAN & DEWULF, PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004  
(602) 256-6100

9  
10  
11  
12 **ORIGINAL and TEN (10) COPIES**  
of the foregoing filed May 16, 2002, with:

13 Docket Control  
14 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
15 Phoenix, Arizona 85007

16 **COPIES** of the foregoing hand-delivered  
17 May 16, 2002, to:

18 Jane Rodda, Esq.  
19 ALJ, Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

20 Maureen Scott, Esq.  
21 Legal Division  
ARIZONA CORPORATION COMMISSION  
22 1200 West Washington Street  
Phoenix, Arizona 85007  
23

**ROSHKA HEYMAN & DEWULF, P.L.C.**

ONE ARIZONA CENTER

400 EAST VAN BUREN STREET - SUITE 800

PHOENIX, ARIZONA 85004

TELEPHONE NO 602-256-6100

FACSIMILE 602-256-6800

1 Mark DiNunzio  
Utilities Division  
2 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
3 Phoenix, Arizona 85007

4 **COPIES** of the foregoing mailed May 16, 2002, to:

5 Richard S. Wolters, Esq.  
6 Marie Arias-Chapleau, Esq.  
AT&T LAW DEPARTMENT  
7 1875 Lawrence Street, Room 1575  
Denver, Colorado 80202

8 Gregory Hoffman  
9 AT&T COMMUNICATIONS  
795 Folsom Street, Rm. 2159  
10 San Francisco, California 94107-1243

11 Joan S. Burke, Esq.  
OSBORN & MALEDON  
2929 North Central Avenue, Suite 2100  
12 Post Office Box 36379  
Phoenix, Arizona 85067-6379

13 Andrea P. Harris  
14 ALLEGIANCE TELECOM, INC.  
2101 Webster, Suite 1580  
15 Oakland, California 94612

16 Diane Bacon  
Legislative Director  
17 COMMUNICATIONS WORKERS OF AMERICA  
5818 North 7th Street, Suite 206  
18 Phoenix, Arizona 85014-5811

19 K. Megan Doberneck, Esq.  
COVAD COMMUNICATIONS COMPANY  
20 7901 Lowry Boulevard  
Denver, Colorado 82030

21 Karen L. Clauson  
22 ESCHELON TELECOM, INC.  
730 2nd Avenue South, Suite 120  
23 Minneapolis, Minnesota 55402

**ROSHKA HEYMAN & DEWULF, P.L.C.**

ONE ARIZONA CENTER

400 EAST VAN BUREN STREET - SUITE 800

PHOENIX, ARIZONA 85004

TELEPHONE NO 602-256-6100

FACSIMILE 602-256-6800

- 1 Michael M. Grant, Esq.  
Todd C. Wiley, Esq.
- 2 GALLAGHER & KENNEDY, P.A.  
2575 East Camelback Road
- 3 Phoenix, Arizona 85016-9225
- 4 Gena Doyscher  
GLOBAL CROSSING LOCAL SERVICES, INC.
- 5 1221 Nicollet Mall  
Minneapolis, Minnesota 55403-2420
- 6 Penny Bewick  
NEW EDGE NETWORKS.
- 7 3000 Columbia House Boulevard, Suite 106  
Vancouver, Washington 98661
- 8 Richard P. Kolb  
ONE POINT COMMUNICATIONS
- 9 Two Conway Park  
150 Field Drive, Suite 300
- 10 Lake Forest, Illinois 60045
- 11 Thomas H. Campbell, Esq.  
LEWIS & ROCA L.L.P.
- 12 40 North Central Avenue  
Phoenix, Arizona 85004
- 13 Thomas L. Mumaw, Esq.  
SNELL & WILMER
- 14 One Arizona Center  
Phoenix, Arizona 85004-0001
- 15 Scott Wakefield, Esq.  
RESIDENTIAL UTILITY CONSUMER OFFICE
- 16 2828 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004
- 17 Steven J. Duffy, Esq.  
RIDGE & ISAACSON P.C.
- 18 3101 North Central Avenue, Suite 1090  
San Mateo, California 94404-2737
- 19 Kevin Chapman  
SBC TELECOM, INC.
- 20 300 Convent Street, Room 13-Q-40  
San Antonio, Texas 78205
- 21
- 22
- 23

**ROSHKA HEYMAN & DEWULF, P.L.C.**

ONE ARIZONA CENTER

400 EAST VAN BUREN STREET - SUITE 800

PHOENIX, ARIZONA 85004

TELEPHONE NO 602-256-6100

FACSIMILE 602-256-6800

- 1 Eric S. Heath, Esq.  
SPRINT COMMUNICATIONS COMPANY L.P.  
2 100 Spear Street, Suite 930  
San Francisco, California 94105
- 3 Andrew O. Isar  
4 Director, Industry Relations  
TELECOMMUNICATIONS RESELLERS ASSOCIATION  
5 4312 92nd Avenue, N.W.  
Gig Harbor, Washington 98335
- 6 M. Andrew Andrade  
7 TESS COMMUNICATIONS, INC.  
5261 South Quebec Street, Suite 150  
8 Greenwood Village, Colorado 80111
- 9 Brian Thomas  
TIME WARNER TELECOM, INC.  
10 520 S.W. 7<sup>th</sup> Avenue, Suite 300  
Portland, Oregon 97204
- 11 Teresa Tan  
WORLDCOM, INC.  
12 201 Spear Street, 9<sup>th</sup> Floor  
San Francisco, California 94105
- 13 Thomas F. Dixon  
14 WORLDCOM, INC.  
707 North 17th Street, Suite 3900  
15 Denver, Colorado 80202
- 16 Michael B. Hazzard, Esq.  
KELLEY DRYE & WARREN, LLP  
17 1200 19<sup>th</sup> Street, N.W., Fifth Floor  
Washington, D.C. 20036
- 18 Richard Sampson  
19 Z-TEL COMMUNICATIONS, INC.  
601 South Harbour Island, Suite 220  
20 Tampa, Florida 33602
- 21 Charles Steese, Esq.  
QWEST CORPORATION  
22 1801 California Street, Suite 4900  
Denver, Colorado 80202
- 23

**ROSHKA HEYMAN & DEWULF, P.L.C.**

ONE ARIZONA CENTER

400 EAST VAN BUREN STREET - SUITE 800

PHOENIX, ARIZONA 85004

TELEPHONE NO 602-256-6100

FACSIMILE 602-256-6800

- 1 Andrew D. Crain, Esq.  
QWEST CORPORATION  
2 1081 California Street, Suite 4900  
Denver, Colorado 80202
- 3 Timothy Berg, Esq.  
4 FENNEMORE CRAIG, P.C.  
3033 North Central Avenue, Suite 2600  
5 Phoenix, Arizona 85012-2913
- 6 Traci Grundon, Esq.  
DAVIS WRIGHT & TREMAINE L.L.P.  
7 2600 Century Square  
1501 Fourth Avenue  
8 Portland, Oregon 98101
- 9 Daniel Waggoner, Esq.  
DAVIS WRIGHT & TREMAINE L.L.P.  
10 1300 S.W. Fifth Avenue, Suite 2300  
Portland, Oregon 97201
- 11 Philip A Doherty  
545 South Prospect Street, Suite 22  
12 Burlington, Vermont 05401-3538
- 13 Gary L. Lane, Esq.  
6902 East 1<sup>st</sup> Street, Suite 201  
14 Scottsdale, Arizona 85251
- 15 W. Hagood Bellinger  
5312 Trowbridge Drive  
16 Dunwoody, Georgia 30338
- 17 Paul Bullis, Esq.  
OFFICE OF THE ATTORNEY GENERAL  
18 1275 West Washington  
Phoenix, Arizona 85007
- 19 Joyce Hundley, Esq.  
20 Antitrust Division  
UNITED STATES DEPARTMENT OF JUSTICE  
21 1401 H Street, N.W., Suite 8000  
Washington, D.C. 20530

22  
23

